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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**

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**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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**GAULDING v. VIRGINIAN RY. CO.**

June 14, 1917.

[92 S. E. 832.]

**1. Railroad (§ 102 (10)\*)—Construction of Crossings—Statute—Action for Damages—Complaint—Sufficiency.**—In an action under Code 1904, § 1294b(2), providing that it shall be the duty of every railroad whose road passes through the land of any person to provide proper and suitable wagonways across said road and to keep such ways in good repair, a declaration, alleging that defendant railroad complied with the first obligation by constructing an overhead bridge, and alleging that, having discharged this duty, defendant violated the second duty by failing to keep the bridge in repair, by which breach of duty, plaintiff suffered damages for which he sues, stated a cause of action under the rule that a complaint must set forth the facts with sufficient certainty to be understood by the defendant, the jury, and the court.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 320-327.\* 4 Va.-W. Va. Enc. Dig. 126; 14 Va.-W. Va. Enc. Dig. 298.]

**2. Railroads (§ 102 (10)\*)—Construction of Crossings—Statute—Action for Damages—Complaint—Sufficiency.**—In an action under Code 1904, § 1294b (2), where it was alleged that defendant railroad constructed an overhead bridge, but failed to keep it in repair, the contention that the declaration should declare that the defendant failed to keep up other suitable wagonways is without merit, where it appeared that only one suitable way was necessary, and the breach of the duty lay in the failure of the defendant to keep that way in repair.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 320-327.\* 4 Va.-W. Va. Enc. Dig. 126; 14 Va.-W. Va. Enc. Dig. 298.]

**3. Railroads (§ 102 (10)\*)—Action to Require Construction of Crossing.**—If defendant railroad failed to comply with its obligation under Code 1904, § 1294b(2), to construct a sufficient number of wagonways across its road on plaintiff's lands, plaintiff's remedy would be by petition to the circuit court for the appointment of commissioners to ascertain whether the additional ways asked for should be constructed, and not by action for damages.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 320-327.\* 14 Va.-W. Va. Enc. Dig. 291; 16 Va.-W. Va. Enc. Dig. 340.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**4. Railroads (§ 102 (1\*))—Construction of Crossings—Statute—Action for Damages—Defenses.**—If defendant railroad wishes to escape liability under Code 1904, § 1294b(2), for failure to keep an overhead bridge over its road on plaintiff's property as originally constructed in good repair, it must absolve itself from that duty by showing that it has in some lawful way been relieved of liability, by providing other proper and suitable wagonways.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 306.\* 14 Va.-W. Va. Enc. Dig. 291; 16 Va.-W. Va. Enc. Dig. 340.]

Error to Circuit Court, Lunenburg County.

Action by J. W. Gauling against the Virginian Railway Company. From a judgment sustaining demurrer to the declaration and dismissing the suit, plaintiff brings error. Judgment reversed, demurrer overruled, and case remanded for further proceedings.

*Geo. E. Allen*, of Lunenburg C. H., for plaintiff in error.

*G. A. Wingfield*, of Norfolk, and *H. T. Hall*, of Roanoke, for defendant in error.

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MOORMAN *v.* BOARD OF SUP'RS OF CAMPBELL COUNTY  
et al.

June 14, 1917.

[92 S. E. 833.]

**1. Execution (§ 333\*)—Return—Sufficiency.**—An execution return of "no effects," dated 2 days after the return day is a valid return within Code 1904, § 3577, providing that execution may issue on a judgment within 20 years from return day of execution on which there is a return, and providing that any return showing an execution has not been satisfied shall be a sufficient return, especially as § 901, subjecting officers failing to make returns to a fine for each month the failure continues, contemplates that the omission may be remedied after the return day.

[Ed. Note.—For other cases, see Execution, Cent. Dig. §§ 1002-1004.\* 5 Va.-W. Va. Enc. Dig. 462.]

**2. Mandamus (§ 71\*)—Return of Process.**—Mandamus will lie to compel return of process by an officer, since it is a ministerial act.

[Ed. Note.—For other cases, see Mandamus, Cent. Dig. § 133\* 9 Va.-W. Va. Enc. Dig. 527.]

**3. Execution (§ 125\*)—Levy—Time.**—An execution may not be levied after the date upon which it is returnable.

[Ed. Note.—For other cases, see Execution, Cent. Dig. §§ 280, 281.\* 5 Va.-W. Va. Enc. Dig. 450.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.